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IN THE FEDERAL DISTRICT COURT OF NEW YORK
EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

DUSTIN J. O'BRIEN,

Plaintiff,

ROSS, J.

vs.

COMPLAINT

EDDIE B. CALVO, in his official capacity
as Governor of Guam, JOHN CAMACHO,
in his official capacity as Director of the
Guam Department of Revenue and
Taxation, THE GUAM DEPARTMENT
OF REVENUE AND TAXATION, and
THE UNITED STATES OF AMERICA,

Defendants.

GO, M.J. M.J.

**COMPLAINT FOR EQUITABLE, DECLARATORY,
AND INJUNCTIVE RELIEF**

Plaintiff, Dustin O'Brien, proceeding *pro se*, files this action against
Defendants, Eddie B. Calvo, in his official capacity as Governor of Guam, John
Camacho, in his official capacity as the Director of the Guam Department of
Revenue and Taxation, the Guam Department of Revenue and Taxation, the United
States of America, and states:

NATURE OF THE ACTION

[1] This case is a civil action pursuant to the structural strictures of the United States Constitution's Vesting, Appointments, Excepting, and Take Care clauses of article II, article I's Uniformity clause, and the Due Process and Equal Protection clauses of both the Fifth and Fourteenth Amendments.

[2] Plaintiff is a bona fide resident of Guam for purposes of territorial income taxation. 26 U.S.C. §§ 937(a), 931(a), 7654(a) (the operative statutes creating the 183 day "presence test"); *see also* I.R.S. Publication 570, "Tax Guide for Individuals With Income From U.S. Possessions, Feb 08, 2012" (explaining the "presence test" – delineating a 183 day temporal rule of physical presence in territories or possessions to determine one's obligation to file an income tax return with the United States Internal Revenue Service or Guam's Department of Revenue and Taxation (hereafter "GDRT")).

[3] On or about April 14, 2012, plaintiff, presently residing in Astoria, New York, but being obligated by the presence test to file his 2011 territorial taxes with the GDRT, properly executed "Form 1040 Guam Individual Income Tax Return 2011," pursuant to 26 U.S.C. §§ 937(a), 931(a), 7654(a), and 48 U.S.C. § 1421i, the Guam Territorial Income Tax ("GTIT,") and subsequently filed an original copy thereof with the GDRT in a post-paid, properly addressed envelope by first class mail in an official depository under the exclusive care and custody of the U.S. Postal Service within the State of New York.

[4] The Governor of Guam, Eddie B. Calvo, pursuant to his 48 U.S.C. § 1422 authority, “to faithfully execute the laws...of the United States applicable in Guam,” and pursuant to his 48 U.S.C. 1421i(d)(2) authority, executes 48 U.S.C. § 1421i, the GTIT, with the aid of subordinates, including John Camacho, the Director of the GDRT (hereafter “the Director of the GDRT”), and does so *ultra vires*. 48 U.S.C. § 1421i(c); 11 Guam Code Ann. § 1104(a), (b).

[5] Congress has conferred upon the Governor of Guam, or his chosen subordinate, in the present case the Director of the GDRT and the Principal Guam Territorial Tax Attorney, “the same administrative and enforcement powers and remedies with regard to the Guam Territorial income tax as the Secretary of the Treasury, and other United States officials of the executive branch, have with respect to the United States income tax.” 48 U.S.C. § 1421i(d)(2).

[6] The Governor of Guam is a popularly elected territorial official whose election does not comport with the Appointments or Excepting clauses, despite his vested authority to execute and enforce the laws of the United States as a *de facto* officer of the United States and to appoint inferior officers of the United States to aid him in executing and enforcing the laws of the United States. *See U.S. CONST. art. II, § 2, cl. 2* (the “Appointments Clause”); 48 U.S.C. § 1422 (empowering the Governor of Guam to execute the laws of the United States applicable in Guam); 48 U.S.C. § 1421i(c) (empowering the Governor with the extraordinary authority to “duly authorize [officers or employees of the Government of Guam] either directly, or

indirectly by one or more redelegations of authority..." [the power to execute and enforce the GTIT]).

[7] Congress has charged Governor Calvo with the duty of the "faithful execution of the laws of Guam and *the laws of the United States* applicable in Guam," and in doing so has transgressed the separation of powers doctrine by both legislating the unconstitutional manner in which the Governor becomes a *de facto* officer of the United States and simultaneously vesting him with the authority to execute the same laws Congress enacts while completely restricting the President's ability to oversee and take care that the laws of the United States are faithfully executed by the Governor and his subordinates. *see* 48 U.S.C. § 1422 (emphasis supplied); *see also* 48 U.S.C. § 1421i(c), (d)(2).

[8] Despite plaintiff's residence in the State of New York, where his constitutional rights are unabridged, unlike residents of the Territory of Guam, Congress has forced plaintiff to avail himself, under threat of criminal and civil penalties, to a territorial official whose territorial office can only be characterized as that of a non-appointed and irremovable *de facto* officer of the United States and whose authority derives exclusively from Congress' article IV plenary power to regulate the territories, which has abridged plaintiff's rights under the Vesting, Appointments, Excepting, Take Care, Uniformity, and the Due Process and Equal Protection clauses of both the Fifth and Fourteenth Amendments. *see* U.S. CONST. art. IV, § 3, cl. 2 (the Territories Clause); 48 U.S.C. § 1421b(e), (n), (u) (the applicable provisions of the Bill of Rights in Guam as conferred by Congress to Guamanians,

omitting the Vesting, Appointments, Excepting, Take Care, and Uniformity clauses, but including the Fifth and Fourteenth Amendment's Due Process and Equal Protection clauses). *see* 48 U.S.C. § 1422a (reserving the power of removal of the Governor of Guam through a special referendum election where at least two-thirds of the number of persons voting for the Governor in the last preceding general election vote in favor of recall and in which those so voting constitute a majority of all those participating in such referendum election); *see* 26 U.S.C. § 7201 (criminalizing willful federal tax violations as felonious conduct); *see also* 48 U.S.C. § 1421i(f) (making 26 U.S.C. § 7201 the standard by which Guamanian or bona fide resident tax violators are punished); 11 Guam Code Ann. § 22105 (making tax violations punishable as a misdemeanor); *see also* *Laguana v. Ansell*, 102 F. Supp. 919, 920 (D.Guam 1952) (noting in dicta that the governments' [both the Government of Guam as defendant, and the United States, as intervening-defendant] took the position that Congress, when enacting the GTTT, was exercising its plenary authority pursuant to article IV to legislate directly for an unincorporated territory).

[9] As a direct and proximate result of defendants' violation of article II's Vesting, Appointments, Excepting, and Take Care clauses, article I's Uniformity clause, the Due Process and Equal Protection clauses of both the Fifth and Fourteenth Amendments, and the violation of other rights plaintiff enjoys, plaintiff has suffered the loss of his constitutional rights and the loss of monies that were illegally levied, assessed, collected, and taxed, entitling him to equitable, declaratory, and injunctive relief in the form of an order enjoining defendants from processing

plaintiff's income tax return or further levying, laying, assessing, or collecting taxes from plaintiff, an order directing the territorial defendants to return any and all tax monies to plaintiff, including any interest thereon, and an order declaring that (1) 26 U.S.C. §§ 937(a), 931(a), 7654(a) are unconstitutional as applied to bona fide residents of Guam; (2) 48 U.S.C. § 1422 is an unconstitutional violation of article II's Vesting, Appointments, Excepting, and Take Care clauses, article I's Uniformity clause, and a violation of the Fifth and Fourteenth Amendment's Equal Protection and Due Process clauses; (3) 48 U.S.C. § 1421i(c) is an unconstitutional violation of article II's Vesting, Appointments, Excepting, and Take Care clauses, article I's Uniformity clause, and a violation of the Fifth and Fourteenth Amendment's Equal Protection and Due Process clauses; (4) 48 U.S.C. § 1421i(d)(2) is an unconstitutional violation of article II's Vesting, Appointments, Excepting, and Take Care clause, article I's Uniformity clause, a violation of the Fifth and Fourteenth Amendment's Equal Protection and Due Process clauses; (5) that the Organic Act of Guam is unconstitutional as a whole because Congress would not have intended for that Act, 48 U.S.C. § 1421, et seq., which lacks a severability clause, to have effect without 48 U.S.C. § 1422, 48 U.S.C. § 1421i(c), (d)(2), or 26 U.S.C. §§ 937(a), 931(a), 7654(a).

[10] Upon information and belief, plaintiff claims that these discrete and unique constitutional questions are ones of first impression that no article III court has ever been presented with.

STATEMENT OF JURISDICTION AND VENUE

[11] This court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 2201, et seq., because this action arises under the Constitution and laws of the United States and concerns a territorial tax, which courts of law have distinguished from a federal tax. *see generally Bank of America v. Chaco*, 539 F.2d 1226 (9th Cir. 1976).

[12] This court may also properly exercise equitable jurisdiction over plaintiff's claims. *see Correctional Services Corp. v. Malesko*, 534 U.S. 61, 74 (2001) (equitable relief "has long been recognized as the proper means for preventing entities from acting unconstitutionally"); *see Bell v. Hood*, 327 U.S. 678, 684 (1946) ("It is established practice for this [Supreme] Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution."); *see Ex Parte Young*, 209 U.S. 123, 149, 165, 167 (1908).

[13] The court may, in practical terms, preside in equity over plaintiff's federal questions because the alleged constitutional violations have created a "here-and-now" injury. *Bowsher v. Synar*, 478 U.S. 714, at 727, n.5 (1986) (concluding that a separation of powers violation can create a "here-and-now" injury where an officer's presumed desire to avoid removal from office by pleasing Congress creates a presumed subservient relationship to Congress); *see Morrison v. Olson*, 487 U.S. 654, 727, (1988) (Scalia, J., dissenting) (arguing that the "purpose of the separation and equilibration of powers in general, and of the unitary Executive in particular, was not merely to assure effective government but to preserve individual freedom"). *see Public Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 468 (1989) (Kennedy, J., concurring in the

judgment) (arguing that “it remains one of the most vital functions of this [Supreme] Court to police with care the separation of governing powers...even when...no immediate threat to liberty is apparent. When the structure fails, liberty is always in peril”).

[14] The United States Supreme Court has further supported federal courts treating separation of powers causes of action as analogous to private right causes of action under the Constitution. *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 130 S. Ct. 3138, 3151 n.2 (2010) (skeptically addressing the Government’s position that Appointments Clause, or separation of powers claims generally, should be treated differently than other constitutional claims with regard to a district court’s ability to exercise equitable jurisdiction where Congress violated the Appointments Clause by restricting the President’s ability to remove a principal officer, who in turn was restricted in his ability to remove an inferior officer).

[15] Plaintiff claims standing based upon *Glidden Co. v. Zdanok*, 370 U.S. 530, 533 (1961), as well as other well-settled separation of powers actions addressing prudential and article III standing doctrine concerns. *Cf. Freytag v. Commissioner*, 501 U.S. 868, 880 (1991) (explaining that the structural interests protected by the Appointments Clause are not those of any one branch of Government but of the entire Republic). *Cf. Wilson v. Kennedy*, 232 F.2d 153, 153-54 (9th Cir. 1956).

[16] Venue is proper in this judicial district, the Eastern District of New York, because a substantial part of the events or omissions giving rise to the claim

occurred here and the Governor of Guam and his subordinates are officers of the United States. 28 U.S.C. § 1391(b), (e).

[17] Venue is proper in this judicial district, the Eastern District of New York, because plaintiff resides in the County of Queens. 28 U.S.C. § 1402(a)(1).

THE PARTIES

[18] Plaintiff, Dustin O'Brien, is a former resident of the Territory of Guam, a present resident of Queens County, New York, and a bona fide resident of Guam for purposes of territorial income taxation for the tax-year 2011.

[19] Defendant, Eddie B. Calvo, Governor of Guam, is named herein solely in his official capacity.

[20] Defendant, John Camacho, Director of the Guam Department of Revenue and Taxation, is named herein solely in his official capacity.

[21] Defendant, the Guam Department of Revenue and Taxation, is an agency of the Government of Guam, which is an instrumentality of the United States government. *see Sakamoto v. Duty Free Shoppers*, 764 F.2d 1285, 1288-89 (9th Cir 1985).

[22] Defendant, the United States of America, is the federal branch of the government of the United States of America.

STATEMENT OF FACTS

[23] Pursuant to 26 U.S.C. §§ 937(a), 931(a), 7654(a), the operative statutes creating the "presence test," and 48 U.S.C. 1421i, the GTIT, plaintiff left the jurisdiction of the United States through the State of Hawaii on February 17, 2011,

entered the jurisdiction of the Territory of Guam on February 18, 2011, where he resided for approximately 292 days, until returning to the State of Hawaii on December 6, 2011, where he has not since left the jurisdiction of the United States and has assumed residence in the State and City of New York.

[24] During plaintiff's residence in Guam he earned income as an employee of the Guam Alternate Public Defender and the Guam Public Defender Service Corporation, whose officers reduced plaintiff's income and transferred that income to the Treasury of Guam, where it is presently held. [See Exhibit "A"].

[25] Because of decades of fiscal irresponsibility, the general incompetence of territorial officials, Guam's present state of insolvency, and recent comments by Marie Benito, Deputy Director of the GDRT, it is unclear if Plaintiff will be granted his tax-return monies for the year 2011 within the year of 2012, if ever. [See Exhibit "B"]

[26] The United States Constitution does not distinguish, as Congress presently does, between incorporated, unincorporated, trust, or commonwealth territories. The United States Constitutional only provides for four political entities: the federal government, state governments, territories, and the District of Columbia. U.S. CONST. art. IV, § 3, cl. 2; *Id.* art. I, § 8, cl. 17 (the "Seat of Government" clause).

[27] The Constitution provides in article IV, § 3, cl. 2, the Territories Clause: "[t]he Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States..."

[28] The Constitution provides in article, II, § 2, the Appointments [and what courts and commentators have called] the Excepting clauses: “[The President] shall nominate, and, by and with the Advice and Consent of the Senate...all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.” U.S. CONST. art. II, § 2, cl. 2.

[29] While the Territories Clause gives Congress broad authority to regulate the territories, it cannot be read to explicitly lend Congress the power to usurp the President’s Appointments or Excepting clause powers, or the Executive’s general function, when carrying out its constitutional mandate “to dispose of and make all needful rules and regulations respecting the territor[ies]...”

[30] The Guam Organic Act of 1950 was enacted pursuant to Congress’ article IV plenary authority to regulate the territories. *see* Organic Act of Guam, 64 Stat. 384 (1950) (codified as amended at 48 U.S.C. §§ 1421-1424 (1976 & Supp. V 1981)).

[31] The Organic Act was later amended to allow for a democratically elected governor. *see* Guam Elective Governor Act, Pub. L. No. 90-497, 82 Stats. 842, 842 (1968) (codified as amended at 48 U.S.C. § 1422 (1988)).

[32] Prior to 1968, the President of the United States appointed the Governor of Guam with the advice and consent of the United States Senate in

conformity with the Appointments Clause. *see* Organic Act of Guam, ch. 512, 64 Stat. 384 (1950) at § 6(a), 64 Stat. at 386.

[33] The GTIT follows the terms of the United States Internal Revenue Code, *mutatis mutandis*. *See* 48 U.S.C. § 1421i(a), (b) and (c); *see Bank of Guam v. United States*, 578 F.3d 1318, 1321 (Fed.Cir. 2009) (discussing “mirroring” process for adapting provision of Internal Revenue Code to create the GTIT); *contra Gumataotao v. Director of Dep’t of Rev. & Taxation*, 236 F.3d 1077, 1079-81 (9th Cir. 2001) (discussing how the Tax Reform Act of 1986, §§ 1271, 1277(b), Pub. L. No. 99-514, 100 Stat. 2085, allows Guam to “de-link” from the IRC “upon an exchange of notes” by the governments of Guam and the United States).

[34] The government of Guam collects and disburses the GTIT, relieving the United States Department of the Treasury of the need to collect and appropriate those proceeds. *Bank of America v. Chaco*, 539 F.2d 1226, 1227-28 (9th Cir. 1976); *see also* 48 U.S.C. § 1421i(c).

[35] Correspondingly, Guamanians, or bona fide residents of Guam pursuant to the presence test, like plaintiff, do not pay income tax to the federal government. *Gumataotao*, 236 F.3d 1077, 1079.

[36] Plaintiff is former employee of the Guam Alternate Public Defender, an autonomous agency of the Government of Guam, where he earned income as a bona fide resident of Guam pursuant to the presence test and the GTIT, which income was reduced and placed into the Treasury of Guam. [See Exhibit “A”].

[37] Upon information and belief, the GDRT is presently processing or will process plaintiff's "Form 1040 Guam Individual Income Tax Return 2011" and in doing so levy, lay, assess, and collect taxes on plaintiff by and through a non-appointed and irremovable *de facto* officer of the United States under the guise of Congress' article IV plenary power to regulate the territories, which will be unsupervised by the President or any other higher executive branch official. [See Exhibits "A" and "C"].

[38] Plaintiff is no longer a resident of Guam, has no substantial contacts with Guam, and lives and works within the jurisdiction of the City and State of New York.

CAUSES OF ACTION

COUNT ONE

UNCONSTITUTIONAL VIOLATION OF THE VESTING CLAUSE OF ARTICLE II OF THE UNITED STATES CONSTITUTION

(U.S. CONST. art. II, § 2)

[39] Plaintiff realleges, adopts, and incorporates by reference paragraphs 1 through 38 above and paragraphs 43 through 55 below, as though fully set forth herein.

[40] Plaintiff alleges that 48 U.S.C. § 1422, *Id.* 1421i, violate the Vesting Clause because each section works to completely restrict the President's ability to oversee and take care that the laws of the United States are faithfully executed and also works to wholly usurp the Executive function and delegate that power to *de facto*

officers of the United States who are irremovable and non-appointed by the President or any other higher executive branch official and who possess the extraordinary power to appoint inferior officers of the United States.

[41] Congress may not wholly usurp the Executive function and allow elected officers of the United States, or officers of the United states who are appointed by elected officers, who are answerable only to Congress and territorial electorates, to enforce the criminal and tax laws of the United States. *see Buckley v. Valeo*, 424 U.S. 1, 132 (1976) (per curiam) (explaining that both principal and inferior officers are to be appointed by their respective modes of appointment but “[n]o class or type of officer is excluded because of its special functions”) (emphasis supplied); *see generally Free Enter. Fund*, 130 S. Ct. 3138.

[42] Congress’ isolation of the Governor and his subordinates from oversight and removal by the President has recently manifested itself in a disturbing letter to President Barack H. Obama, dated September 23, 2011, where Governor Calvo claims authority to act as an officer of the United States not pursuant to his 48 U.S.C. § 1422 authority, but pursuant to the Charter of the United Nations and two resolutions adopted by that international organization, which plaintiff need not expound upon, but needless to say, Governor Calvo has clearly exhibited his general disregard for his extraordinary authority to execute the laws of the United States without a proper appointment. [See Exhibit “D”].

COUNT TWO

**UNCONSTITUTIONAL VIOLATION OF THE APPOINTMENTS CLAUSE
OF THE UNITED STATES CONSTITUTION**

(U.S. CONST. art. II, § 2, cl. 2)

[43] Plaintiff realleges, adopts, and incorporates by reference paragraphs 1 through 42 above as though fully set forth herein.

[44] Eddie B. Calvo is the present democratically elected Governor of Guam pursuant to 48 U.S.C. § 1422 and is responsible for the faithful execution of the laws of Guam and *the laws of the United States applicable in Guam* and exercises significant governmental authority when levying, laying, assessing, and collecting taxes *ultra vires* because the Governor lacks a proper appointment by the President with the advice and consent of the United States Senate. 48 U.S.C. § 1422 (emphasis supplied).

[45] John Camacho is the present Director of the GDRT, who acts as an officer of the United States pursuant to 48 U.S.C. § 1421i when levying, laying, assessing, and collecting taxes, and thereby exercises significant governmental authority *ultra vires* because the Director lacks a proper appointment by the President with the advice and consent of the United States Senate.

[46] Congress' is empowered to legislate directly for Guam and could amend the Organic Act to remove Governor Calvo or the Director of the GDRT from office if they chose not to execute the laws of the United States in a manner satisfactory to Congress. *see Guam v. Okada*, 694 F.2d 565, 568-69 (9th Cir. 1982) (holding that Congress' plenary power over Guam, as an unincorporated territory,

gives Congress the power to legislate directly for Guam, or to establish a government for Guam subject to congressional control, and except as Congress may determine, Guam has no inherent right to govern itself).

[47] Congress has plenary authority in all cases in which it has substantive legislative jurisdiction, “so long as the exercise of that authority does not offend some other constitutional restriction.” *INS v. Chadha*, 462 U.S. 919, 941 (1983).

[48] Plaintiff alleges that Guam is nothing more than instrumentality of the federal government and to be treated by courts of law as a federal agency, as the Ninth Circuit Court of Appeals held in *Sakamoto*, and as the United States Supreme Court held in *Wheeler*, which makes Governor Calvo a *de facto* officer of the United States by virtue of his executive office in Guam. *see Sakamoto v. Duty Free Shoppers, Ltd.*, 764 F.2d 1285, at 1288-89 (9th Cir. 1985), *cert denied*, 475 U.S. 1081 (1986); *United States v. Wheeler*, 435 U.S. 313, 321-22 (1978); *see e.g. Domenech v. National City Bank*, 294 U.S. 199, 204-05 (1935) (when a territorial government enacts and enforces criminal laws to govern its inhabitants, it is not acting as an independent political community like a State, but as an agency of the federal government).

[49] Plaintiff alleges that the Governor of Guam and the Director of the GDRT’s path to becoming a *de facto* officers of the United States are not in conformity with the Appointments or Excepting clauses, nor are their subordinates, and they are presently executing the laws of the United States and thereby exercising significant governmental authority, and illegally levying, laying, assessing, and collecting taxes on plaintiff as well as holding plaintiff criminally liable for any failure

to avail himself to the Governor and his subordinates at the GDRT, despite plaintiff's actual residence in the State of New York and his inability to participate in democratic processes contemplated by the Framers to ensure faithful execution of the laws of the United States.

[50] Plaintiff alleges that 48 U.S.C. § 1422, *Id.* 1421i's mandate that Governor Calvo faithfully execute the laws of the United States applicable in Guam, including the GTIT, by and through the GDRT, as if her were the Secretary of the Treasury or some other executive branch official, makes him by definition a principal officer of the United States pursuant to art. II, § 2, cl. 2, of the United States Constitution and requires his appointment by the President with the advice and consent of the United States Senate.

[51] Plaintiff alleges that the Governor of Guam and the Director of the GDRT's path to becoming a *de facto* officers of the United States are not in conformity with the Appointments or Excepting clauses and they are presently executing the laws of the United States, exercising significant governmental authority, and illegally laying, assessing, and collecting taxes on plaintiff, and as a direct and proximate result of that exercise of authority have violated the Appointments Clause, abridged plaintiff's constitutional rights, and thereby aggrieved plaintiff. *Marbury v. Madison*, 5 U.S. 1 Cranch 137, 167 (1803) (explaining that the article II, § 2, cl. 2 power of nomination and appointment is a discretionary political power that the President alone is to use); *United States v. Germaine*, 99 U.S. 508, 510 (1878) (holding that there can be but little doubt that all persons who can be said to hold an office

under the Constitution were intended to be included in one of the two modes of appointment of article II, § 2, cl. 2); *Springer v. Philippine Islands*, 277 U.S. 189, 202 (1928) (holding that Legislative power, as distinguished from Executive power, is the authority to make laws, but not to enforce them or appoint the agents charged with the duty of such enforcement); *Myers v. United States*, 272 U.S. 52, 135 (1956) (holding that article II grants the President general administrative control of those executing the laws, which excludes the exercise of legislative power by Congress to provide for appointments and removals); *Buckley v. Valeo*, 424 U.S. 1, 132 (1976) (per curiam) (explaining that merely because Congress has been given explicit and plenary authority to regulate a field of activity, it must therefore have the power to appoint those who are to administer the regulatory statute is both novel and contrary to the language of the Appointments Clause); *Bowsher v. Synar*, 478 U.S. 714, 722 (1986) (holding that the Constitution does not contemplate an active role for Congress in the supervision of officers charged with the execution of the laws it enacts); *INS v. Chadha*, 462 U.S. 919, 958-59 (1983) (holding that Congress could not use its plenary authority to regulate immigration to enact a law enabling the House of Representatives to vote as a body to compel the Attorney General to deport an alien whom the executive and judicial branch chose not to expel).

[52] Plaintiff's no longer resides in Guam and is not qualified to vote in a Guamanian gubernatorial elections, which has extinguished any kind of democratic power plaintiff could exercise to compel the Governor of Guam or his subordinates to properly execute the laws of the United States. *see* 3 Guam Code Ann. § 3101.

[53] Governor Calvo and the Director of the GDRT are both completely isolated from removal by the President and Congress may not reserve for itself the power of removal of an officer, charged with executing the laws, except by impeachment. *Bowsher v. Synar*, 478 U.S. 714, 730 (1986); 48 U.S.C. § 1422a (reserving the power of removal of the Governor of Guam through a special referendum election where at least two-thirds of the number of persons voting for the Governor in the last preceding general election vote in favor of recall and in which those so voting constitute a majority of all those participating in such referendum election).

[54] Governor Calvo and the Director of the GDRT are presently neither removable by the President or any other higher Executive Branch official, but in light of their statutory duties to lay, assess, and collect taxes on plaintiff, and appoint inferior officers to aid them in executing the GTIT, they are principal officers of the United States.

[55] The Department of Justice has previously objected before Congress to a territorial governor exercising executive authority only properly administered by an officer of the United States appointed under the Appointments Clause. *Political Status of Puerto Rico: Hearings on S. 244 Before the Sen. Comm. on Energy and Natural Resources*, 102nd Congo 190 (1991) (statement of Attorney General Richard Thornburgh), *quoted in* T. Alexander Aleinikoff, *Puerto Rico and the Constitution: Conundrums and Prospects*, 11 CONST. COMMENT. 15, 36 n.85 (1994) (noting that in comments attached to Thornburgh's testimony the Department of Justice argued that a statutory provision granting to the Governor of Puerto Rico the power to force

reconsideration of federal regulations constituted “significant governmental authority under the laws of the United States,” as defined by the Supreme Court in *Buckley v. Valeo*, and therefore could only be carried out by a federal official appointed under the Appointments Clause).

COUNT THREE

UNLAWFUL VIOLATION OF THE EXCEPTING CLAUSE

(U.S. CONST. art II, § 2)

[56] Plaintiff realleges, adopts, and incorporates by reference paragraphs 1 through 55 above as though fully set forth herein.

[57] In the alternative, plaintiff alleges that the Governor of Guam and the Director of GDRT are inferior officers who lack proper appointments by the President, a court of law, or a higher executive branch official.

[58] Governor Calvo and the Director of the GDRT are both completely isolated from removal by the President and Congress may not reserve for itself the power of removal of an officer, charged with executing the laws, except by impeachment. *Bowsher v. Synar*, 478 U.S. 714, 730 (1986); 48 U.S.C. § 1422a (reserving the power of removal of the Governor of Guam through a special referendum election where at least two-thirds of the number of persons voting for the Governor in the last preceding general election vote in favor of recall and in which those so voting constitute a majority of all those participating in such referendum election.)

COUNT FOUR

UNLAWFUL VIOLATION OF THE TAKE CARE CLAUSE

(U.S. CONST. art II, § 2)

[59] Plaintiff realleges, adopts, and incorporates by reference paragraphs 1 through 60 above as though fully set forth herein.

[60] Plaintiff alleges that the process and manner in which he is being taxed by the Governor of Guam and the Director of GDRT violates the Take Care clause.

COUNT FIVE

UNLAWFUL VIOLATION OF THE UNIFORMITY CLAUSE

(U.S. CONST. art I, § 8, cl. 2)

[61] Plaintiff realleges, adopts, and incorporates by reference paragraphs 1 through 60 above as though fully set forth herein.

[62] Plaintiff alleges that the process and manner in which he is being taxed by the Governor of Guam and the Director of GDRT is so fundamentally unfair and jurisdictionally deficient as to violate the Uniformity Clause.

COUNT SIX

**UNLAWFUL VIOLATION OF THE FIFTH AND FOURTEENTH
AMENDMENT'S DUE PROCESS CLAUSES**

(U.S. CONST. amend. V; 48 U.S.C. § 1421b(e), (u))

[63] Plaintiff realleges, adopts, and incorporates by reference paragraphs 1 through 62 above as though fully set forth herein.

[64] Plaintiff alleges that the process and manner in which he is being taxed by the Governor of Guam and the Director of GDRT is so fundamentally unfair and

jurisdictionally deficient as to violate the Due Process clauses of the Fifth and Fourteenth Amendment to the United States Constitution.

COUNT SEVEN

**UNLAWFUL VIOLATION OF THE FIFTH AND FOURTEENTH
AMENDMENT'S EQUAL PROTECTION CLAUSES**

(U.S. CONST. amend. V; 48 U.S.C. § 1421b(n))

[65] Plaintiff realleges, adopts, and incorporates by reference paragraphs 1 through 64 above as though fully set forth herein.

[66] Plaintiff alleges that the process and manner in which he is being taxed by the Governor of Guam and the Director of GDRT is so fundamentally unfair and jurisdictionally deficient as to violate the Equal Protection Clause of the Fifth Amendment to the United States Constitution.

[67] Plaintiff alleges that his rights under the Equal Protection clauses of the Fifth and Fourteenth Amendments have been violated by Congress' classification of him as a quasi-resident of Guam forcing him to avail himself to the Governor and his subordinates, which has abridged his constitutional right to be taxed by properly appointed officers of the United States instead of a usurper and his subordinates whose loyalties possibly lie with territorial residents and even more remotely members of Congress, but almost certainly not the President.

COUNT EIGHT

UNCONSTITUTIONAL DELAGATION

(U.S. CONST. art I, § 1)

[68] Plaintiff realleges, adopts, and incorporates by reference paragraphs 1 through 67 above as though fully set forth herein.

[69] The Constitution provides that “[a]ll legislative Powers herein granted shall be vested in a Congress of the United States.” U.S. CONST. art. I, § 1.

[70] Congress has provided in the GTIT that “[a]ny function needful to the administration and enforcement of the income-tax laws in force in Guam...shall be performed by any officer or employee of the government of Guam duly authorized by the Governor (either directly, or indirectly by one or more redelegations of authority) to perform such function. 48 U.S.C. § 1421i(c).

[71] Congress has further provided in the GTIT that “[n]eedful rules and regulations not inconsistent with the regulations prescribed under [26 U.S.C. § 7654(e)]...for enforcement of the Guam Territorial income tax shall be prescribed by the Governor.” 48 U.S.C. § 1421i(d)(2).

[72] Because Guam has enacted a statute that allows for the Governor to appoint the Director of the GDRT, who in turn has the authority to appoint an officer of the United States known as the Principal Guam Territorial Tax Attorney, who is charged with “[a]ssist[ing] the Director and *I Maga’lahen Guahan* [the Governor of Guam] in administering and enforcing the Guam Territorial Income Tax,” Congress has unconstitutionally delegated legislative power to an entity outside the Legislative Branch by empowering the Legislature of Guam to enact laws that are

only properly enacted by Congress with presentment to the President. 11 Guam Code Ann. § 1106.1(1), (2), (3), (5), (6); see generally GUAM PUB. L. NO. 28-175:3 (2007).

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays that the Court:

A. make an order and judgment that 48 U.S.C. § 1422 is unconstitutional because Congress has violated plaintiff's rights under article II's Vesting, Appointments, Excepting, and Take Care clauses, article I's Uniformity and Vesting clauses, and charged the Governor of Guam and his subordinates with executing the laws of the United States without the Governor's election or his subordinates appointments comporting with art. II, § 2 of the United States Constitution and similarly violated plaintiff's rights under the Fifth and Fourteenth Amendment's Due Process and Equal Protection clauses;

B. make an order and judgment that 48 U.S.C. § 1421i(c) is unconstitutional because Congress has violated plaintiff's rights under article II's Vesting, Appointments, Excepting, and Take Care clauses, article I's Uniformity and Vesting clauses, and charged the Governor of Guam and his subordinates with executing the laws of the United States without the Governor's election or his subordinates appointments comporting with art. II, § 2 of the United States Constitution and similarly violated plaintiff's rights under the Fifth and Fourteenth Amendment's Due Process and Equal Protection clauses;

C. make an order and judgment that 48 U.S.C. § 1421i(d)(2) is unconstitutional because Congress has violated plaintiff's rights under article II's

Vesting, Appointments, Excepting, and Take Care clauses, article I's Uniformity and Vesting clauses, and charged the Governor of Guam and his subordinates with executing the laws of the United States without the Governor's election or his subordinates appointments comporting with art. II, § 2 of the United States Constitution and similarly violated plaintiff's rights under the Fifth and Fourteenth Amendment's Due Process and Equal Protection clauses;

D. make an order and judgment that 26 U.S.C. §§ 937(a), 931(a), 7654(a) are unconstitutional because Congress has violated plaintiff's rights under article II's Vesting, Appointments, Excepting, and Take Care clauses, article I's Uniformity and Vesting clauses, and charged the Governor of Guam and his subordinates with executing the laws of the United States without the Governor's election or his subordinates appointments comporting with art. II, § 2 of the United States Constitution and similarly violated plaintiff's rights under the Fifth and Fourteenth Amendment's Due Process and Equal Protection clauses;

E. make an order and judgment enjoining the Governor of Guam and any of his subordinates from exercising any authority pursuant to 48 U.S.C § 1422 or *Id.* § 1421i;

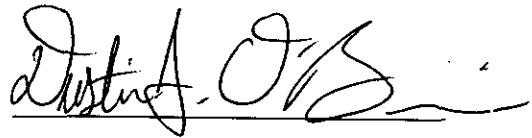
F. make an order and judgment that the Organic Act of Guam is unconstitutional because Congress would not have intended for that act, 48 U.S.C. § 1421, et seq., which lacks a severability clause, to have effect without 48 U.S.C. § 1422, 48 U.S.C. § 1421i(c), (d)(2), or 26 U.S.C. §§ 937(a), 931(a), 7654(a);

G. make an order and judgment directing defendants to return any and all tax monies plaintiff is entitled to and any interest thereon;

H. award plaintiff costs and attorneys' fees pursuant to any applicable statute or authority;

I. order any other relief that the Court deems just and proper.

Respectfully submitted this 30th day of May 2012

A handwritten signature in black ink, appearing to read "Dustin J. O'Brien", written over a horizontal line.

Dustin J. O'Brien
36-18 11th Street
Astoria, New York 11106
(718) 736-5515
dustin.obrien@live.law.cuny.edu

EXHIBIT A

PUBLIC DEFENDER SERVICE CORPORATION

STATEMENT OF EARNINGS
AS OF PPE - 07/16/11

EMPLOYEE'S NUMBER : APD18
 NAME : DUSTIN J. O'BRIEN
 RATE : 9.60
 DIRECT DEPOSIT: CCSE FCU

	REGULAR	Y-T-D
REGULAR EARNING	76.80	
A/L EARNINGS	0.00	
D-A/L EARNINGS	0.00	
S/L EARNINGS	0.00	
D-S/L EARNINGS	0.00	
HOLIDAY HOURS	76.80	
OTHER	0.00	
RETROACTIVE PAY	0.00	
LESS: OVERPAYMENT	0.00	
GROSS EARNINGS	153.60	4,761.60
TAXES/RETIREMENT:		
WITH-HOLDINGS	6.49	492.13
RETIREMENT FUND	7.68	238.08
MEDICARE	2.23	69.07
ADJUSTED EARNINGS AFTER TAXES/RETIRE:	137.20	
DEDUCTIONS:		
SC HSA 2000 MED	4.62	
SC DENTAL	7.38	
NET PAY-DIRECT DEPOSIT	125.20	

LEAVE STATUS	USED	ACCRUED	BALANCE
ANNUAL	0	4	22
SICK	0	4	6
DONATED A/L	0		0
DONATED S/L	0		0

*22 & paid out 7/22/11
w/ Direct Deposit*

EXHIBIT B



First refunds out June 8: Filed after February? You might not get a check

Residents who filed their tax returns in January and February most likely will see their tax refunds in the mail around June 8.

The cutoff date for paying tax refunds using \$60 million in bond funding was still unclear yesterday, but taxpayers who filed during the first two months of the year most likely will receive refund checks first, said Marie Benito, deputy director at the Department of Revenue and Taxation.

Those who filed in March may see refunds, depending on the date they filed, Benito said.

Approximately \$105 million is owed to taxpayers for tax year 2011 refunds.

Gov. Eddie Calvo confirmed yesterday that the local government successfully secured bond funding that will pay about \$60 million of the 2011 tax refunds.

The Calvo administration successfully borrowed \$108.7 million from the bond market at an interest rate of 4.6 percent, lower than the 4.9 percent rate from last year's bond.

The latest bond proceeds will transfer to the government of Guam on June 6, which will then lead to the printout and mailing of tax refund checks. A more precise cutoff date for who gets tax refunds will be known after the checks have been printed, Benito said.

The department has stated that there will be no need to line up for the refunds, which was the case last December.

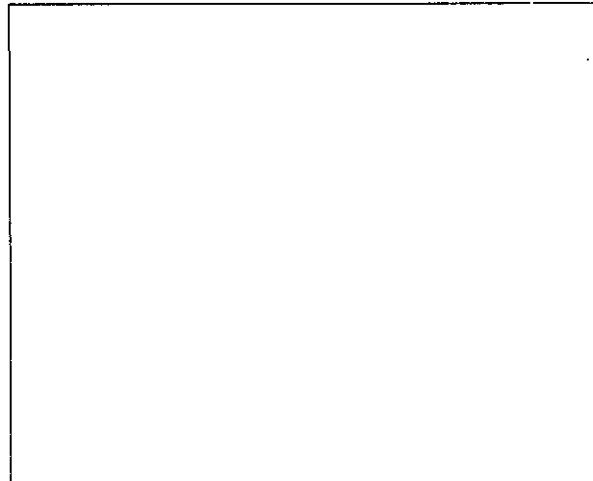
Some residents who were at Rev and Tax yesterday said the refunds would be great, if they're among the recipients.

Paul Lizama, 28, said he doesn't think he'll get a refund because he filed late. But if he did get a tax refund, he would pay off his student loan.

"It'd be nice to pay off my loan. But unfortunately, I filed late and it's a first-come, first-serve basis," he said.

He hopes that the government will be able to pay the remaining tax refunds later this

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year.

"I'm hopeful I'll get it this year. They did it before and I hope they can do it again," Lizama said.

Benito said the administration is trying to identify sources of funds for paying the rest of the refunds that will remain outstanding after the \$60 million has been exhausted. The payments will be issued in increments, as funding sources come up, Benito said.

The governor, speaking from Okinawa, said he hopes the administration will be able to clear the remaining tax refund obligations by this year.

Liz Silvia, 43, said she wasn't sure if she'd get her refund, but hopes it will come.

"I filed as early as I could, but I'm not sure if it was early enough," she said.

She hopes to use the refund to pay off bills and maybe treat her family this summer. She would like to take her family to water parks on island and to Talofof Falls.

"We don't have the money to splurge on those things, so it'd be nice to treat the family," she said.

Bruce Dinsman, a licensed appraiser at Pacific Island Appraisals, said he doesn't expect a refund this year.

"I'm late in filing," Dinsman said.

But he said he tries to file his tax return in

a way that the government doesn't owe him, or he doesn't owe the government, so he normally doesn't expect a refund.

"We're not part of the tax refund game," he said.

Ike Santos, 54, said he expects a refund in the mail.

"I filed very early so I think I'll get it," Santos said.

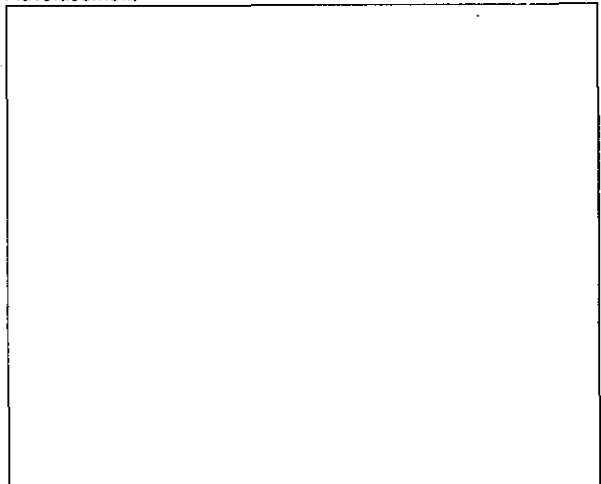
He will use the money to pay off medical bills and if he has extra, he wants to buy new tires for his car.

"This refund will help a lot. I have so many bills and I can't really afford to pay all of them," Santos said.

Santos said he has faith that the government will pay out the rest of the refunds this year.

"There are many people who need the money. I hope they can get it," he said.

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More

Zoom
Tax Specialist Diana Reyes, right, assists customer Bruce Dinsman at the Income Tax and Processing window in the Department of Revenue and Taxation in Barrigada Heights yesterday. / Rick Cruz/Pacific Daily News/rmcruz@guampdn.com

TAX REFUNDS Q&A

•When will the bond money be here?

By the first week of June.

•When can people expect their tax refund checks?

Starting June 8.

•How much was borrowed?

About \$108 million.

•How much of that will go to tax refunds?

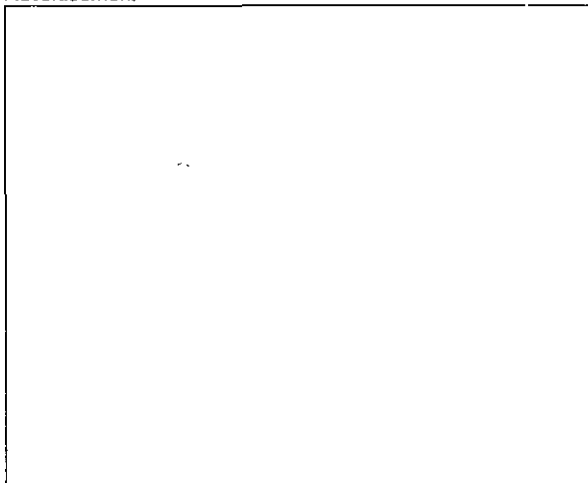
The bond will pay \$60 million in tax refunds. Only tax year 2011 refunds will be paid with the bond money.

•How will refunds be distributed?

By mail.

•What will the rest of the bond money pay for? About \$25 million of the bond money would be used to pay debts owed by the Guam Department of Education and Guam Memorial Hospital to the Government of Guam Retirement Fund. Approximately \$18 million will help pay for the government's health insurance payments for local government employees, retirees and their dependents.

Advertisement



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EXHIBIT C

Form 1040 Department of Revenue and Taxation Guam Individual Income Tax Return (99) 2011		OMB No. 1545-0074 DRT Use Only—Do not write or staple in this space.																															
For the year Jan. 1–Dec. 31, 2011, or other tax year beginning , 2011, ending , 20																																	
Your first name and initial Dustin J		Last name OBrien																															
If a joint return, spouse's first name and initial		Last name																															
Mailing address (number and street). If you have a P.O. box, see instructions. 4 Golfside Circle		Apt. no.																															
City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions). Canandaigua, NY 14424																																	
Foreign country name		Foreign province/county																															
		Foreign postal code																															
Filing Status 1 <input checked="" type="checkbox"/> Single 2 <input type="checkbox"/> Married filing jointly (even if only one had income) 3 <input type="checkbox"/> Married filing separately. Enter spouse's SSN above and full name here. ▶ 4 <input type="checkbox"/> Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter the child's name here. ▶ 5 <input type="checkbox"/> Qualifying widow(er) with dependent child																																	
Exemptions 6a <input checked="" type="checkbox"/> Yourself. If someone can claim you as a dependent, do not check box 6a. b <input type="checkbox"/> Spouse																																	
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2">c Dependents:</th> <th>(2) Dependent's social security number</th> <th>(3) Dependent's relationship to you</th> <th>(4) <input checked="" type="checkbox"/> If child under age 17 qualifying for child tax credit (see instructions)</th> </tr> <tr> <th>(1) First name</th> <th>Last name</th> <th></th> <th></th> <th></th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td><td><input type="checkbox"/></td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td><input type="checkbox"/></td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td><input type="checkbox"/></td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td><input type="checkbox"/></td></tr> </tbody> </table>				c Dependents:		(2) Dependent's social security number	(3) Dependent's relationship to you	(4) <input checked="" type="checkbox"/> If child under age 17 qualifying for child tax credit (see instructions)	(1) First name	Last name								<input type="checkbox"/>					<input type="checkbox"/>					<input type="checkbox"/>					<input type="checkbox"/>
c Dependents:		(2) Dependent's social security number	(3) Dependent's relationship to you	(4) <input checked="" type="checkbox"/> If child under age 17 qualifying for child tax credit (see instructions)																													
(1) First name	Last name																																
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				<input type="checkbox"/>																													
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				<input type="checkbox"/>																													
If more than four dependents, see instructions and check here ▶ <input type="checkbox"/>																																	
d Total number of exemptions claimed Add numbers on lines above ▶ 1																																	
Income																																	
7 Wages, salaries, tips, etc. Attach Form(s) W-2		7 4735 00																															
8a Taxable interest. Attach Schedule B if required		8a																															
b Tax-exempt interest. Do not include on line 8a		8b																															
9a Ordinary dividends. Attach Schedule B if required		9a																															
b Qualified dividends		8b																															
10 Taxable refunds, credits, or offsets of state and local income taxes		10																															
11 Alimony received		11																															
12 Business income or (loss). Attach Schedule C or C-EZ		12																															
13 Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶ <input type="checkbox"/>		13																															
14 Other gains or (losses). Attach Form 4797		14																															
15a IRA distributions	15a	b Taxable amount	15b																														
16a Pensions and annuities	16a 475 00	b Taxable amount	16b 425 00																														
17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E		17																															
18 Farm income or (loss). Attach Schedule F		18																															
19 Unemployment compensation		19																															
20a Social security benefits	20a	b Taxable amount	20b																														
21 Other income. List type and amount Settlement of a Claim		21 3000 00																															
22 Combine the amounts in the far right column for lines 7 through 21. This is your total income ▶		22 8160 00																															
Adjusted Gross Income																																	
23 Educator expenses		23																															
24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ		24																															
25 Health savings account deduction. Attach Form 8889		25																															
26 Moving expenses. Attach Form 3903		26																															
27 Deductible part of self-employment tax. Attach Schedule SE		27																															
28 Self-employed SEP, SIMPLE, and qualified plans		28																															
29 Self-employed health insurance deduction		29																															
30 Penalty on early withdrawal of savings		30																															
31a Alimony paid	b Recipient's SSN ▶	31a																															
32 IRA deduction		32																															
33 Student loan interest deduction		33 839 00																															
34 Tuition and fees. Attach Form 8917		34																															
35 Domestic production activities deduction. Attach Form 8803		35																															
36 Add lines 23 through 35		36																															
37 Subtract line 36 from line 22. This is your adjusted gross income ▶		37 7321 00																															

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 11320B

Form 1040 (2011)

Form 1040 (2011)

Page 2

Tax and Credits	38	Amount from line 37 (adjusted gross income)	38	7321	00
Standard Deduction for—	39a	Check <input type="checkbox"/> You were born before January 2, 1947. <input type="checkbox"/> Blind. <input type="checkbox"/> Spouse was born before January 2, 1947. <input type="checkbox"/> Blind. Total boxes checked ▶ 39a			
• People who check any box on line 39a or 39b or who can be claimed as a dependent, see instructions.	b	If your spouse itemizes on a separate return or you were a dual-status alien, check here ▶ 39b			
• All others: Single or Married filing separately, \$5,800	40	Itemized deductions (from Schedule A) or your standard deduction (see left margin)	40	5800	00
Married filing jointly or Qualifying widower, \$11,600	41	Subtract line 40 from line 38	41		
Head of household, \$8,500	42	Exemptions: Multiply \$3,700 by the number on line 6d	42	3700	00
	43	Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-	43	0	00
	44	Tax (see instructions). Check if any from: a <input type="checkbox"/> Form(s) 8814 b <input type="checkbox"/> Form 4972 c <input type="checkbox"/> 962 election	44	0	00
	45	Alternative minimum tax (see instructions). Attach Form 6251	45		
	46	Add lines 44 and 45	46		
	47	Foreign tax credit. Attach Form 1116 if required	47		
	48	Credit for child and dependent care expenses. Attach Form 2441	48		
	49	Education credits from Form 8863, line 23	49		
	50	Retirement savings contributions credit. Attach Form 8880	50		
	51	Child tax credit (see instructions)	51		
	52	Residential energy credits. Attach Form 5695	52		
	53	Other credits from Form: a <input type="checkbox"/> 3800 b <input type="checkbox"/> 8801 c <input type="checkbox"/>	53		
	54	Add lines 47 through 53. These are your total credits	54		
	55	Subtract line 54 from line 46. If line 54 is more than line 46, enter -0-	55		
Other Taxes	56	Self-employment tax. Attach Schedule SE	56	See Below	
	57	Unreported social security and Medicare tax from Form: a <input type="checkbox"/> 4137 b <input type="checkbox"/> 8919	57	See Below	
	58	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required	58	43	00
	59a	Household employment taxes from Schedule H	59a		
	b	First-time homebuyer credit repayment. Attach Form 5405 if required	59b		
	60	Other taxes. Enter code(s) from instructions	60		
	61	Add lines 55 through 60. This is your total tax	61	43	00
Payments	62	Federal income tax withheld from Forms W-2 and 1099	62	554	00
	63	2011 estimated tax payments and amount applied from 2010 return	63		
If you have a qualifying child, attach Schedule EIC.	64a	Earned income credit (EIC)	64a		
	b	Nontaxable combat pay election 64b	64b		
	65	Additional child tax credit. Attach Form 8812	65		
	66	American opportunity credit from Form 8863, line 14	66		
	67	First-time homebuyer credit from Form 5405, line 10	67		
	68	Amount paid with request for extension to file	68		
	69	Excess social security and tier 1 RRTA tax withheld 69 See Below	69		
	70	Credit for federal tax on fuels. Attach Form 4136	70		
	71	Credits from Form: a <input type="checkbox"/> 2439 b <input type="checkbox"/> 8839 c <input type="checkbox"/> 8801 d <input type="checkbox"/> 8865	71		
	72	Add lines 62, 63, 64a, and 65 through 71. These are your total payments	72	554	00
Refund	73	If line 72 is more than line 61, subtract line 61 from line 72. This is the amount you overpaid	73		
	74a	Amount of line 73 you want refunded to you.	74a	511	00
	75	Amount of line 73 you want applied to your 2012 estimated tax 75	75		
Amount You Owe	76	Amount you owe. Subtract line 72 from line 61. Make check payable to Treasurer of Guam	76		
	77	Estimated tax penalty (see instructions)	77		

Third Party Designee	Do you want to allow another person to discuss this return with the DRT (see instructions)? <input checked="" type="checkbox"/> Yes. Complete below. <input type="checkbox"/> No		
Designee's name ▶	Phone no. ▶	Personal identification number (PIN) ▶	
Sign Here			
Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.			
Joint return? See instructions and keep a copy for your records.	Your signature ▶ <i>Justin O. San</i>	Date ▶ 4/13/12	Your occupation ▶ Paralegal
	Spouse's signature, if a joint return, both must sign.	Date	Spouse's occupation
			Daytime phone number ▶ (718) 736-5515
			If the DRT sent you an Identity Protection PIN, enter it here (see inst.)
Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date
	Firm's name ▶	Firm's EIN ▶	Check <input type="checkbox"/> if self-employed
	Firm's address ▶	Phone no.	PTIN

* Lines 56, 57, 69 must be filed with IRS Austin, Texas 73301-0215

Form 1040 (2011)

EXHIBIT D

EDDIE BAZA CALVO
Governor



RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

September 23, 2011

The Honorable Barack Obama
President of the United States of America
1600 Pennsylvania Ave.
Washington, DC 20500

Dear President Obama:

Guam has proven its ability of self-government since electing both its executive and legislative leaders since 1970. Generations of Guamanians have proudly waved the flag of freedom. Countless men and women have served and given their lives in defense of our great nation. To this day, we remain proud patriots.

Guam is a progressive American territory in the Asia Pacific region. We are one of 16 territories identified as "non self-governing" by the United Nations, the last remaining in the western Pacific region. Self-determination has been a substantial issue raised within serious political and social conversation.

The Calvo Tenorio administration is committed to pursuing a political status that speaks to the will of the people.

Pursuant to Chapter XII, Article 73 of the UN charter and UN resolutions 1514 and 1541, I officially announce that Guam's Commission on Decolonization, an official organization recognized and endorsed by this administration, mandated to fully understand the voice and will of the people, is embarking on a quest for political destiny.

As we move forward with this most important right to self-determination, I respectfully request the Obama Administration's continued support for Guam and her people during this significant endeavor in our history.

EDDIE BAZA CALVO
Governor



RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

We hope that Guam will be afforded the same opportunities as all those who have sought to determine their own political statuses before us.

Sincerely,

A handwritten signature in black ink, appearing to be "Eddie Baza Calvo".

EDDIE BAZA CALVO

Cc: The Honorable Hillary Clinton, Secretary of State
The Honorable John Boehner, Speaker of the House of Representatives
The Honorable Harry Reid, United States Senate Majority Leader
His Excellency Ban Ki-moon, United Nations Secretary General
Laura Vaccari, United Nations, Decolonization Unit Chief